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Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

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STERRETT, JONATHAN G	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/973,430
Filing Date: October 9, 2001
Appellant(s): Hancock et al.

MAILED

FEB 07 2007

GROUP 3600

Edouard Garcia, Reg. 38,461
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 6, 2006 appealing from the Office action mailed May 30, 2006.

(1) Real Part in Interest

A statement identifying by name the real part in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. Claims 1-20 are pending.

(4) Status of Amendments

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Kinra US 5,731,991

Schoneker, David R; "Changing the supply-chain controls for excipients—Part 1: The IPEC-Americas 'Certificate of Analysis guide for bulk pharmaceutical excipients'", June 2000, Pharmaceutical Technology, Vol. 24, Iss. 6, p.42, ProQuest ID 55656380.

Stewart, Doug; "Suspicious for a living / behind the scenes with bumper bashers, dishwasher debunkers, chocolate chip chompers and condom demolition experts – the folks who test products for Consumer Reports", Oct 1993, San Francisco Chronicle, Calif; p.7.Z.1, ProQuest ID 67113483.

PMG "Welcome to the Performance Measurement Group, LLC",
www.pmgbenchmarking.com, web.archive.org webpage of October 6, 2000, pp.1-4,
web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps_pdbb_faq.html.

GP-10 "General Motors Supplier Development – General Procedure: Evaluation and Accreditation of Supplier Test Facilities GP10", Published by GM's Supplier Development Administration, GM1796, February 1990, pp.1-19.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: The ground(s) for rejection are reproduced below from the Non-final Office Action, mailed May 30, 2006, and are provided here for the convenience of both the Appellant and the Board of Patent Appeals:

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 1-4, 8-10 and 17-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991**.

Regarding **Claim 1**, Kinra teaches:

collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples

Column 5 line 6-8, criterion scores (i.e. multiple sets of performance parameter values are collected) are collected by the computer memory. These scores correspond to the results of testing of product samples. –see also column 9 line 42-45.

generating an evaluation report based upon the multiple sets of performance parameter values.

Column 10 line 11-16, an evaluation screen (i.e. report) is generated based upon evaluation product data, criteria, categories or sections (i.e. multiple sets of performance parameter values).

Kinra does not teach:

at test facilities of each of the suppliers;

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Testing and evaluation of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

Regarding **Claim 2**, Kinra teaches:

wherein the collecting comprises testing each of the product samples

column 4 line 17, management of test cases/scripts comprises testing the product samples in terms of how they handled the test cases/scripts.

Kinra does not teach:

at the test facilities of each of the suppliers;

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Prequalification of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

Regarding **Claim 3**, Kinra teaches:

wherein testing comprises controlling the product samples during the testing.

Column 6 line 62-63, access to testing for each of the product samples can be designated (i.e. controlling access to testing of samples – see also column 6 line 59-61).

Kinra does not teach where the controlling is provided by the purchasing entity. However, official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products including during testing at the test facilities of suppliers. The direction and control of testing products by the purchasing entity ensures that standards and criteria of the purchasing entity are being measured against during the test to ensure an appropriate buying decision.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the testing is controlled by the purchasing entity, because it would ensure products are properly qualified/disqualified according the purchasing entity's standards prior to the buying decision .

Regarding **Claim 4**, Kinra teaches:

Wherein the testing comprises the purchasing entity preventing unauthorized access to the product samples during the testing at the test facilities of each of the suppliers.

Column 6 line 59-61, a system user can prevent unauthorized access to product samples during testing. Kinra teaches that the system can provide this functionality to ensure that users evaluate the product only in their particular area of expertise.

Kinra does not teach where the preventing of unauthorized access is provided by the purchasing entity. However, official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products, including unauthorized access to product samples.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the purchasing entity prevents unauthorized access to product samples, because it would ensure product features are properly evaluated by those having the requisite experience to provide the evaluation.

Regarding **Claim 8**, Kinra teaches:

Testing each of the product samples at test facilities of each of the suppliers under substantially similar test conditions.

Column 1 line 50-55, product evaluation is conducted according to a standardized scheme (i.e. substantially similar test conditions).

Column 8 line 25-29, product scores are compared according to the same criteria.

Official Notice is also taken that it is old and well known in the art of measurement to test product samples according to substantially similar test conditions so that meaningful comparisons can be made. Otherwise, if the test conditions are substantially different, then an invalid comparison would be made.

Regarding **Claim 9**, Kinra teaches:

analyzing the multiple sets of performance parameters.

Column 8 line 1-10, providing a bar chart with comparative values of two different products in a single category (See Figure 2 108b & #82) provides for analyzing multiple sets of performance parameters. In this example the analysis provided by the bar charts indicates that one product is stronger in configuration management. Figure 2 includes many similar analyses of multiple sets of performance parameters.

Regarding **Claim 10**, Kinra teaches:

compiling a single consistent set of performance parameter values from the multiple sets of performance parameter values.

Column 8 line 54-57, normalized criterion score in the prototyping and simulation criterion is provided at the end of each of the product 1 and product 2 value columns. See also Figure 2 #122 and 111 for the compiled single consistent set of performance parameter values.

Claims 17-19 recite similar limitations as those recited in **Claims 1-4 and 8-10** above, and are therefore rejected under the same rationale.

15. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **Schoneker**.

Schoneker, David R; "Changing the supply-chain controls for excipients—Part 1: The IPEC-Americas 'Certificate of Analysis guide for bulk pharmaceutical excipients'", June 2000, Pharmaceutical Technology, Vol. 24, Iss. 6, p.42, ProQuest ID 55656380.

Regarding **Claim 5**, Kinra teaches controlling access to the evaluation of product samples, as per claim 4 above but does not teach:

wherein the testing comprises the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers.

Schoneker teaches:

wherein the testing comprises the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers.

Page 4 paragraph 1 line 1-4, the user of material from a supplier (i.e. the purchasing entity) conducts their own tests on material provided by the supplier to establish the reliability of the supplier's COA's. This would require the purchasing entity maintaining custody of the product samples during testing (rather than the supplier, since it is the supplier's own COA results that are being verified).

Schoneker further teaches that this step is necessary to ensure the supplied material meets specifications (line 4 of paragraph 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of where the purchasing entity maintains custody of the product samples during testing, because it would ensure that the supplied material met the specifications of the purchasing entity.

16. **Claims 6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **Stewart**.

Stewart, Doug; "Suspicious for a living / behind the scenes with bumper bashers, dishwasher debunkers, chocolate chip chompers and condom demolition experts – the folks who test products for Consumer Reports", Oct 1993, San Francisco Chronicle, Calif; p.7.Z.1, ProQuest ID 67113483.

Regarding **Claim 6**, Kinra does not teach:

further comprising removing identification information from the product samples before the testing at the test facilities of each of the suppliers.

Stewart teaches:

further comprising removing identification information from the product samples before the testing at the test facilities of each of the suppliers.

Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this example, a number "28" is assigned to a cookie being tested.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

Regarding **Claim 7**, Kinra does not teach:

wherein the removing comprises removing from each of the products any information from which the corresponding supplier of the product is identifiable.

Stewart teaches:

wherein the removing comprises removing from each of the products any information from which the corresponding supplier of the product is identifiable.

Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated. This blind testing includes not only the removal of product identification, but also supplier identification.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this case, a number "28" is assigned. This blind testing includes not only the removal of product identification, but also supplier identification.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product and supplier identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

17. **Claims 11-14 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of the **Performance Measurement Group** (hereinafter **PMG**).

"Welcome to the Performance Measurement Group, LLC",
www.pmgbenchmarking.com, web.archive.org webpage of October 6, 2000, pp.1-4,
web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps_pdbf_fa.html.

Regarding **Claim 11**, Kinra does not teach:

transmitting the evaluation report to one or more of the suppliers.

PMG teaches:

transmitting the evaluation report to one or more of the suppliers.

Page 2 paragraph 7 line 1-5, subscribers can access the benchmarking system to access the system.

Page 2 paragraph 5 line, mini-presentations summarize the benchmarking results and comprise a report that is downloaded (i.e. transmitting).

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of transmitting this report to one or more of the suppliers, as taught by PMG, because it would allow suppliers to benchmark their performance against that of other suppliers.

Regarding **Claim 12**, Kinra does not teach:

collecting a fee from a given one of the suppliers before transmitting the evaluation report to the given supplier.

PMG teaches:

collecting a fee from a given supplier before transmitting the evaluation report to the given supplier.

Page 2 paragraph 6 line 1-2, subscriptions (i.e. paying a fee that is collected) are sold for companies to buy the benchmarking services.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of collecting a fee from the supplier, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers.

Regarding **Claim 13**, Kinra teaches providing comparison (i.e. benchmarking) of product samples that are received from suppliers (Column 6 line 7-15) but does not teach:

customizing the evaluation report so that a respective one of the suppliers receiving the evaluation report is able to benchmark performance without identifying other suppliers.

PMG teaches:

customizing the evaluation report so that a respective one of the suppliers receiving the evaluation report is able to benchmark performance without identifying other suppliers.

Page 3 paragraph 2 line 2-6, the identity of other suppliers is removed so that company-specific data is not revealed. This ensures confidentiality for companies wishing to participate in the benchmarking study.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the

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step of collecting a fee from the supplier, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers.

Regarding **Claim 14**, Kinra does not teach:

Wherein the customizing comprises encoding identification information of all the suppliers other than the respective supplier receiving the customized evaluation report.

PMG teaches:

Wherein the customizing comprises encoding identification information of all the suppliers other than the respective supplier receiving the customized evaluation report.

Page 2 paragraph 5 line 3-5, evaluation reports are customized for individual suppliers and provide a comparison of the supplier to average and best-in-class (BIC) for a particular metric. The BIC metric does not identify the supplier, only what the metric value is.

Page 3 paragraph 2 line 2-4, company data is kept proprietary by only showing metrics in aggregate, other than for BIC and avg. metrics, as discussed above.

The confidentiality taught by PMG encourages companies to participate in the benchmarking. Official Notice is taken that it is old and well known in the art of management that company data that reflects internal performance is considered sensitive and proprietary. The comparison between a company's data and that of the

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aggregate (i.e. average and as well BIC), provides for the company to compare itself to the industry group as a whole for the purpose of knowing where weaknesses lie.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of customizing the report to ensuring confidentiality of suppliers, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers and maintain confidentiality of the suppliers' data.

Claim 20 recites similar limitations as those recited in **Claims 11-14** above, and is therefore rejected under the same rationale.

18. **Claims 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **General Motors Supplier Development General Procedure "Evaluation and Accreditation of Supplier Test Facilities GP10"** (hereinafter **GP10**).

"General Motors Supplier Development – General Procedure: Evaluation and Accreditation of Supplier Test Facilities GP10", Published by GM's Supplier Development Administration, GM1796, February 1990, pp.1-19.

Regarding **Claim 15**, Kinra teaches compiling a data structure relating parameter values for each product sample and providing an evaluation report that provides a comparison of product samples (Column 6 line 7-15 and Figure 2) but does not teach:

wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each product sample.

GP10 teaches:

wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each product sample.

Page 17 Item B No. 5, product samples are identified and reports identifying the product samples are traced (i.e. tracked and recorded).

Page 5, GP10 teaches that each facility is recorded and qualified as a supplier test facility. Standards are applied to these test facilities to ensure that different test facilities provide as repeatable measurements across these different test facilities as possible (see also page 6 Item 6a where qualification of test equipment is discussed).

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Both GP10 and Kinra address product sample evaluation, thus both GP10 and Kinra are analogous art.

GP10 teaches maintaining records and ensuring qualification for supplier test facilities is necessary to ensure traceability for supplier test results (page 17 Item B No. 5).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of including supplier test facility data for individual test samples, as taught by GP10, because it would provide traceability for the test results provided for product samples.

Regarding **Claim 16**, Kinra teaches:

wherein the generating comprises producing a graph displaying one or more performance parameter values for each of the product samples.

Column 6 line 7-15, the screen generator produces a comparison graph the displays a performance parameter value for two different products so that a comparison can be made graphically of the two products.

(10) Response to Argument

1. The applicant's arguments have been fully considered but are not persuasive.
2. The applicant argues with respect to Claim 1 on page 7 that the examiner has improperly ruled out according patentable weight to the claim preamble.

The examiner respectfully disagrees.

The preamble cites intended use of the claim to benchmark product samples provided to a purchasing entity by multiple independent suppliers. The collecting steps and generating steps that are positively recited in the body of the claim in and of themselves make the claim complete. It is not necessary to add the preamble's statement of intended use to the claim limitations positively recited in the body of the claim to make the claim complete. The collecting and generating steps recited to provide an evaluation step are able to stand on their own. Therefore, the examiner appropriately did not grant any patentable weight to the preamble.

The fact that a claim may or may not recite limitations is not sufficient basis to grant any limitation in the preamble patentable weight. Rather, it is whether the limitations cited in the body of the claim "are able to stand on their own". Clearly the collecting and generating steps that are positively recited in the body are able to stand alone.

3. The applicant argues on page 8 with respect to Claim 1 and on page 12 with respect to Claim 2 that the cited rejection fails to provide a prima facie case of

obviousness under 35 USC 103(a). The applicant then alleges that the examiner made an "unsubstantiated assertion" to take an Official Notice as part of the rejection.

The examiner respectfully disagrees.

The claim limitation states "results of testing **each** of the product samples at test facilities of **each** of the suppliers". For purposes of this argument, let's say we have three suppliers, A, B and C, who respectively produce Product A, B and C and where the suppliers have the same purchasing entity who buys from them.

If we say "All" of the products, then we are referring to **all** Products A, B and C. If we say "each" of the products, then we are referring to them individually: each Product A, B or C. Let's further suppose that each supplier has a test facility. If we say "All" of the test facilities, then we are referring to **all** Test Facilities A, B and C. Again, if we refer to "each" test facility, then that refers to the test facilities individually and not necessarily all of them together.

The term "each" does not mean "all". If "each" of the products are referred to, then that does not mean "all" of Product A, B and C. If "each" of the Test Facilities are referred to, then that does not mean "all" of the Test Facilities A, B and C. Conversely, if "all" of the products or test facilities is referred to, then that means all of the individual products or test facilities, and not "each" of them.

Another way to look at the recitation of "each of the product samples" and "each of the suppliers" is that the term "each" as it is used in the claim specifies a one-to-one relationship between an individual product sample and an individual test facility.

The applicant's arguments fit if the claim instead cited "all of the product samples" being tested at "each of the test facilities", meaning that all the samples was tested at each of the supplier's test facilities – that is a many-to-one relationship (i.e. as per above, Products A, B and C tested at Supplier A, Products A, B and C tested at Supplier B, and Products A, B and C tested at Supplier C). However, the claim does not cite "all" or "every", it cites "each". The claim does not recite a many-to-one relationship between the products and the test facilities, but rather a one-to-one relationship.

Lastly, the examiner notes that at no time in the prosecution history did the applicant make any attempt to traverse the official notice. Accordingly, according MPEP 2144.03(c), these statements were taken as admitted prior art because no traversal of this statement was made in the subsequent response.

4. The applicant argues with respect to Claim 1 on page 10, last paragraph; and claim 2 on page 13, paragraph 1, that the teachings of Kinra would not enable a product to be prequalified to determine that the components are of a certain predetermined standard.

The examiner respectfully disagrees.

Kinra teaches that the evaluation score applied to a product may represent the capacity of a product to perform a function as specified by an evaluation statement (column 3 line 9-12). Kinra teaches that there is a need to evaluate different software products that are sourced at different vendors because these products are going to be

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performing together on a computing system (column 1 line 10-15) and a pre-evaluation would ensure they would function together. Kinra notes that one of the criteria for evaluation is the interoperability of the software products that are sourced (column 3 line 44-46). This criteria provides a motivation to ensure that products sourced from different vendors, in fact, are capable of performing together once installed on the computing system.

Kinra notes that there is a lack of a standardized system for performing product testing (column 1 line 20-25). Kinra's system and approach is designed to provide a standardized test so that comparisons can be made, including to determine whether a product meets a standard for a particular test (column 2 line 18-24, the test provides for evaluating aspects important to a user, no matter how broad or narrow the evaluation is).

Thus, Kinra's system would allow for evaluating product at a supplier, to ensure it met a predetermined standard, where the product is measured in a standardized way, and where the product being tested is of importance to a customer. The Official Notice taken notes that prequalification at a supplier (i.e. testing to determine if a product meets a standard) is performed to ensure quality standards are met prior to shipment. One of ordinary skill in the art would apply Kinra's teachings to evaluating products at a supplier's site, because Kinra teaches using a standardized test to evaluate performance on an item where that performance is of interest to a customer. The expectation of success is met because the scores provided by Kinra's teachings provide a way to evaluate and measure a particular performance attribute for a product. A

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person of ordinary skill in the art would reasonably expect to be successful in applying Kinra's approach to evaluate a product to ensure that, prior to shipment, the product met certain predetermined standards.

5. The applicant argues with respect to Claim 3 on page 13 that the Official Notice fails to take into account where the purchasing entity controls the testing of the products at the testing facilities of each of the suppliers.

The examiner respectfully disagrees.

The applicant provides a "quote" of the office action including the Official Notice taken in the previous office action. This "quotation" appears in the middle of page 14. However, the applicant has left out the actual wording of the rejection as it appeared in the Office Action. The "quote" should say "Official Notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products ***including during testing at the test facilities of suppliers.***" The italicized phrase appeared in the last Office Action noting that the purchasing entity is known to control testing products during testing at the test facilities of suppliers. The combination of the Official Notice and the teachings of Kinra render the limitations of Claim 3 obvious. The examiner notes that this Official Notice was not challenged.

The Official Notice is thus admitted prior art that purchasing entities control testing at suppliers and that this is done to ensure that an entity purchasing something from a supplier to ensure that the decision to buy from the supplier was appropriate. In

other words, if a purchaser is considering buying something from a supplier, then this practice helps determine if the supplier is qualified. If the purchasing entity did not control the testing, then it would be in the supplier's best interest to make themselves look good, so they would appear more capable than they are (i.e. a conflict of interest). Having the purchasing entity controlling testing at each of the suppliers ensures an appropriate buying decision by keeping the suppliers "honest".

6. The applicant argues on page 17 with respect to Claim 5 that the combined references fail to teach the cited limitations because the cited reference of Schonecker teaches performing testing at the purchasing entity and not at the testing facilities of each of its suppliers.

The examiner respectfully disagrees.

Schonecker teaches that manufacturing controls (i.e. maintaining custody) must exist throughout the supply chain to prevent the chance of contamination, mix-ups and errors (page 1 last paragraph). Schonecker further states that purchasing entities (in this case, it is pharmaceutical companies) are ultimately responsible for **ensuring** that they are receiving appropriate quality in the materials supplied for their products. As noted previously, there is a recognized advantage of testing at the supplier, to ensure that the product is of adequate quality before it is shipped. However, it would be possible to perform testing without having the benefits of maintaining custody (i.e. maintaining controls). Schonecker notes an example where testing was performed, but that the purchasing entity did not maintain adequate custody over the product. This resulted in

a dangerous material being used, even though testing was performed (as per a certificate of analysis, COA). Providing controls includes maintaining custody not just at the suppliers testing facility but throughout the supply chain because maintaining custody is necessary to prevent the chance of contamination, mix-ups and errors.

7. The applicant argues with respect to claims 6 and 7 on pages 18-21 that Kinra would not have been combined with Stewart because it would have been in the best interest of the person using Kinra's invention to be objective, and thus there would have been no need to remove the identity from the sample being tested.

The examiner respectfully disagrees.

Kinra teaches that there is a need to remove bias from testing, because current testing methods are subject to personal bias in the testing (column 1 line 21 mentions personal bias affecting testing). However, as noted in the Office Action, Kinra does not teach removing identities of the products or the product's supplier. One of ordinary skill in the art would recognize that Kinra's standardized approach would help to remove personal bias, however that is not the only objective of Kinra's invention. Kinra also notes that "a smattering of benchmark tests" (implying a group of tests that don't provide complete coverage); "expert evaluation" (suggesting that these are of value because they come from 'experts', but this implies to a POSITA that these are subject to bias and may not be comprehensive, i.e subject to what is important to the 'expert'); "qualitative assessments" (suggesting subjectivity rather than objectivity); and "personal bias" (implying to a POSITA a blatant leaning one way or the other based on the individual

rather than pure objectivity. Thus Kinra is addressing deficiencies with each of these, and not only in just removing bias from the tester themselves.

Stewart also teaches an approach that relies upon objective standards for testing (note the discussion in the abstract regarding the standard approach for testing paper towels). Stewart teaches that where standard tests do not exist, that the Consumers Union staff creates standard approaches to be fair in evaluating products. Stewart notes that even when the CU staff had to rely on equipment that was improvised that they were "sticklers for precision" (see page 5 last paragraph). Stewart notes that CU goes to great lengths to provide objective testing – their motto is "Test, Inform Protect" (see page 2 para 4). Clearly the testers at Consumers Union also would be interested in not being biased in performing evaluations, since their stated goal is to protect the consumer, and they are not affiliated with any of the companies whose products they are testing. However, even though a purchasing entity such as Consumers Union who is interested in providing objective reporting, and also removes the identity of products during testing, then this suggests to a POSITA that there is a benefit in removing a sample's identity in removing bias. Looking at the reference on page 2 para 6 where the most expensive soap is rated last in a blind test (i.e. one in which the identity is removed) suggests that if the test had not been blind, then the brand name of the soap would have influenced the testers not to have rated it so low. Indeed having a test produce a result where a premium, expensive product is rated last goes against what a POSITA would expect, since if something is a premium product, then it would be expected to be ranked higher than other products that were not so expensive (e.g. the

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conventional wisdom proven against in the case of the Gucci soap test is “you get what you pay for”).

8. The applicant argues with respect to Claims 11 on page 20-22 that the cited combination of Kinra and PMG fail to teach the claim limitations of transmitting the evaluation report to suppliers.

The combination of Kinra and Official Notice for Claim 1 address providing comparative evaluation for a purchasing entity who is producing an evaluation report of various suppliers. There is no express motivation in Kinra as to why suppliers would want to know how their products would compare with others. However, providing a benchmarking comparison as a service to companies who are being benchmarked against other companies is taught by PMG. The service taught by PMG provides companies with a benchmarking comparison for how they develop products. It is implicit in this teaching that if a product development process is benchmarked as being of a high capability, this implies that the products benefit (see PMG page 2 para 6, product lines should be similar in providing benchmarking and PMG page 3 para 7, product development projects are benchmarked by product category). A POSITA would recognize that the management elements taught by PMG as affecting new product development (PMG page 2 para 4, Portfolio Management, Product Strategy, and Technology Management and Manufacturing – see PMG page 3 para 7) would impact the products produced. Thus, if a company benchmarks high in how they develop products, then this impacts the products themselves.

PMG's approach allows a company to evaluate themselves on the product development process itself (part of PMG's process includes benchmarking specific products also as they are developed – see PMG page 3 para 7; projects are evaluated against product category, marketing segment and project type). PMG transmits benchmarking evaluations to companies so they can compare themselves with other companies. This provides a way for those companies to have an objective evaluation of where they stand in comparison to other companies. This benchmarking service is PMG's business.

A POSITA would combine the product evaluation teachings of Kinra with PMG for at least two reasons. First, it would provide a supplier with an objective evaluation of how a customer evaluated them with respect to other suppliers. Providing a comparative benchmarking study to a supplier gives them a goal to strive towards (PMG page 2 para 5, e.g. "Best in Class" is a metric that is applied to companies). Benchmarking helps companies improve, since they can see how they compare to others. The purchasing entity in Kinra's teachings would benefit from including PMG's teachings also because if the suppliers are improving vis a vis looking at their benchmarks, then this also means the products they are providing are also improving – this is a benefit to the purchasing entity.

9. The applicant argues on page 23 with respect to claims 15 and 16 that the combination of Kinra, Official Notice and GP-10 fail to teach the claimed limitations.

The examiner respectfully disagrees.

The examiner notes again that the applicant has provided a "quote" of the final office action's rejection of Claim 15, however this 'quote' is different than what actually appeared in the rejection. The actual statement made in the rejection was:

"Regarding Claim 15, Kinra teaches...but does not teach:

wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each product sample.

GP10 teaches:

wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each product sample..."

The remainder of the rejection is as it appeared in the final rejection.

The applicant states that the invention recited in claim 15 is "compiling a data structure relating performance parameter values, which correspond to results of testing each of the product samples at test facilities of each of multiple independent suppliers of the product samples, and respective ones of the supplier test facilities for each of the product samples." (see page 25, first paragraph).

However what the claim actually states is:

"wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each of the product samples".

This means creating a data structure that contains information stating the product sample, the performance parameter value corresponding to the product sample, and the supplier test facility where the product was tested (i.e. where the parameter value was generated in testing). Kinra teaches providing a report which corresponds the product sample and its corresponding performance parameter value.

The cited reference GP10 is a General Motor's supplier development document that details how suppliers are to ensure that their test facilities meet GM's standards for testing products to be provided to GM (see the Preface to GP-10 on page 1, here it states "GM expects suppliers to have material and performance characteristics of its products validated by an accredited materials test facility"). GM's goal is to prevent defective product from being supplied to GM, and have the process descriptions and controls in place to ensure this does not happen, and to provide traceability (e.g. to help troubleshoot the process) if it does occur. Figure 9 on page 13 shows a sample of a process where a supplier receives material and produces a part for GM and the associated, specific GM tests to be applied to parts in that supplier manufacturing process. Page 17 item B5 detail how testing samples are identified (i.e. providing a corresponding test sample and test data) and traced. Furthermore, item B6 on page 17 details how discrepant material is prevented from being used.

Since GM expects its suppliers to provide certified testing and calibration for individual pieces of test equipment and expects its suppliers to prevent discrepant material (e.g. samples from lots to be used in the manufacturing process where the samples indicate those lots are bad) from being used in the manufacturing process,

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then a POSITA would recognize that GP10 teaches providing a data structure that correlates a sample with its performance data (i.e. indicating it is defective or 'discrepant') and furthermore in accordance with GP-10's teachings about traceability, to correlate the sample and test data with the test equipment (i.e. the test facility) on which the test is performed.

GM expects it's suppliers to maintain records of calibration of test equipment to ensure that the material tested on the equipment is accurately tested (see page 9 item 4a – the calibration and verification information recorded for each piece of equipment). Furthermore GM expects that testing of samples includes recording the equipment (page 16 item B3 – written test procedures include the specific pieces of equipment). The testing and traceability teachings of GP-10 suggest to a POSITA to provide a data sheet that correlates the lot being tested with a particular machine (i.e. test facility) it is being test on so that the report results would correlate a specific machine's calibration with a particular lot being tested. A POSITA would recognize the advantage of this for two reasons. One, in the case of samples that are tested to be 'bad', there is documentation that the test machine that shows the material to be discrepant is a calibrated machine in accordance with GM's policies (i.e. the documented test was performed using a correctly calibrated and documented machine, so the results are presumed valid). Secondly, if a lot that is tested to be 'good', but later causes problems in the manufacturing process, through warranty claims, etc.-- this lot would have a paper trail documenting the lot and the machine it was tested on so that the validity of the machine's calibration procedure and documentation can be verified.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




Jonathan Green Sterrett
Examiner
Art Unit 3623

February 5, 2007

Conferees:


Michelle Tarae

Primary Examiner 3623


Tariq Hafiz
SPE 3623